

CSBA Sample

Board Policy

Instruction

BP 6158(a)

INDEPENDENT STUDY

Note: Education Code 51745-51749.6 authorize districts to establish independent study programs to meet the educational needs of students. Pursuant to Education Code 51745, as amended by AB 130 (Ch. 44, Statutes of 2021), for the 2021-22 school year, all districts are required to offer independent study to meet the educational needs of students.

AB 167 (Ch. 252, Statutes of 2021) amended various Education Code provisions related to independent study, as reflected throughout this policy and the accompanying administrative regulation. Education Code 51747, as amended by AB 167, authorizes a district to receive apportionment credit for independent study for any student who is unable to attend in-person instruction due to a quarantine, under a local or state public health guidance, for exposure to or infection with COVID-19 or due to a school closure for COVID-19, pursuant to Education Code 41422.

Education Code 51747, as amended by AB 130, **mandates** that the Governing Board adopt a policy with specified requirements as a condition of receiving state apportionments for independent study students. In addition to meeting the requirements specified by Education Code 51747, board policies must comply with rules and regulations adopted by the Superintendent of Public Instruction (SPI). Boards are encouraged to review independent study policies as the SPI adopts revised rules to reflect the new requirements of AB 130.

Commencing with the 2021-22 fiscal year Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, the State Controller is required to incorporate verification of the adoption of the policies, including loss of apportionment for independent study for districts found to be noncompliant.

Education Code 51749.5 **mandates** that the Board adopt policy with specified components as a condition of offering a program of course-based independent study. The mandated components are reflected throughout this policy and the accompanying administrative regulation.

Commencing with the 2021-22 fiscal year Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, the State Controller is required to incorporate verification of the adoption of the policies and other requirements, including loss of apportionment for independent study pursuant to Education Code 51747 and 51749.5 for districts found to be noncompliant.

When developing policy on independent study, 5 CCR 11701 requires the Board to consider, in a public hearing, (1) the scope of its existing or prospective use of independent study as an instructional strategy, (2) its purposes in authorizing independent study, and (3) factors bearing specifically on the maximum realistic lengths of assignments and acceptable number of missed assignments for specific populations of students or adult students.

In the event of a school closure necessitated by an emergency condition pursuant to Education Code 46392, districts must develop a plan for offering independent study to affected students pursuant to Education Code 46393, as added by AB 130 **and amended by AB 167**. See BP 3516.5 - Emergency Schedules.

Independent study may be offered as a program within a school, as a charter school, or as an alternative school of choice pursuant to Education Code 58500-58512; see AR 0420.4 - Charter School Authorization, BP 6146.11 - Alternative Credits Toward Graduation; and BP/AR 6181 - Alternative Schools/Programs of Choice.

INDEPENDENT STUDY (continued)

The Governing Board authorizes independent study as an optional alternative instructional strategy for students whose needs may be best met through study outside of the regular classroom setting. Independent study shall offer a means of individualizing the educational plan to serve students who desire a more challenging educational experience, whose health or other personal circumstances make classroom attendance difficult, who are unable to access course(s) due to scheduling problems, and/or who need to make up credits or fill gaps in their learning. As necessary to meet student needs, independent study may be offered on a full-time basis or on a part-time basis **and** in conjunction with part- or full-time classroom study.

The Superintendent or designee may provide a variety of independent study opportunities, including, but not limited to, through a program or class within a comprehensive school, an alternative school or program of choice, a charter school, and an online course.

(cf. 0420.4 - Charter School Authorization)

(cf. 6181 - Alternative Schools/Programs of Choice)

Note: Education Code 51747, as amended by AB 167, relaxes certain independent study requirements for the 2021-22 school year as to students who are unable to participate in classroom-based instruction due to a quarantine order or school closure due to COVID-19, including the requirement that participation in independent study be voluntary.

The California Department of Education (CDE), in its 2021-22 AA & IT Independent Study FAQs, interpreted Education Code 51747 as permitting a district to require a student to participate in independent study under circumstances specified in the following paragraph.

Except for students who, during the 2021-2022 school year, cannot participate in classroom-based instruction due to quarantine or school closure for exposure to or infection with COVID-19, A student's participation in independent study shall be voluntary. (Education Code 51747, 51749.5, **51749.6**)

Independent study for each student shall be under the general supervision of a district employee who possesses a valid certification document pursuant to Education Code 44865 or an emergency credential pursuant to Education Code 44300. Students' independent study shall be coordinated, evaluated, and documented, as prescribed by law and reflected in the accompanying administrative regulation. (Education Code 51747.5)

Note: Pursuant to Education Code 46300, as amended by AB 130, the attendance of students participating in independent study for three or more consecutive school days will be included in computing average daily attendance (ADA) for apportionment purposes.

However, for the 2021-22 school year, districts are permitted pursuant to Education Code 51747, as amended by AB 167, to claim apportionment for fewer than three consecutive school days for students who cannot participate in classroom-based instruction due to a quarantine order or school closure due to COVID-19.

INDEPENDENT STUDY (continued)

The following optional paragraph is for use by districts that wish to limit independent study to periods of three or more consecutive school days.

With the exception of students who, during the 2021-2022 school year, cannot participate in classroom-based instruction due to a quarantine or school closure for exposure to or infection with COVID-19, The the minimum period of time for any independent study option shall be three consecutive school days. (Education Code 51747)

General Independent Study Requirements

Note: Education Code 51745, as amended by AB 130, requires districts to offer independent study for the 2021-22 school year only, and thereafter to offer independent study at their discretion. Districts may meet the requirement for the 2021-22 school year by contracting with a county office of education or by entering into an interdistrict transfer agreement with another district pursuant to Education Code 46600. In addition, the requirement to offer independent study for the 2021-22 school year may be waived for districts by the county superintendent of schools in the county in which the district is located if the district demonstrates that (1) offering independent study would create an unreasonable fiscal burden on the district or county office of education due to low numbers of students participating or other extenuating circumstances; and (2) the Board does not have the option to enter into an interdistrict transfer agreement with another district or to contract with a county office of education to provide an independent study option.

For single-district counties, the waiver must be granted by the SPI.

For the 2021-22 school year, the district shall offer independent study, as specified in Education Code 51745, to meet the educational needs of students unless the district has obtained a waiver. (Education Code 51745)

For the 2022-23 school year and thereafter, the Superintendent or designee may continue to offer and approve independent study for an individual student upon determining that the student is prepared to meet the district's requirements for independent study and is likely to succeed in independent study as well as or better than the student would in the regular classroom setting.

(cf. 5147 - Dropout Prevention)

(cf. 6011 - Academic Standards)

(cf. 6143 - Courses of Study)

(cf. 6146.1 - High School Graduation Requirements)

(cf. 6146.11 - Alternative Credits Toward Graduation)

(cf. 6172 - Gifted and Talented Student Program)

(cf. 6200 - Adult Education)

Note: Pursuant to Education Code 46100, the Board is required to fix the length of the school day for each grade level, in accordance with law. CDE, in its "Frequently Asked Questions," clarifies that independent study is not an alternative curriculum and that students in independent study are required to meet the same number of instructional minutes as their peers who are physically at the school site for their instruction.

INDEPENDENT STUDY (continued)

The minimum instructional minutes for students participating in independent study shall be the same as required for their peers at the school who are receiving in-person instruction, except as otherwise permitted by law. (Education Code 46100)

Note: Education Code 51747 **mandates** that the Board, in a public hearing, adopt a policy on the maximum length of time, by grade level and type of program, which may elapse between the time an independent study assignment is made and the date by which the student must complete the assignment. 5 CCR 11700 defines "type of program" as the statutory program category for purposes of attendance accounting, such as adult education or continuation high school. In addition, 5 CCR 11701 **mandates** that Board policy reflect an awareness that excessive leniency in the duration of independent study assignments can result in a student falling so far behind peers as to increase, rather than decrease, the risk of dropping out of school.

The following paragraph sets one week for all grade levels and types of programs as the maximum length of time an independent study assignment should be completed, and should be revised to reflect the length of time determined by the Board. In order to ensure that apportionments **credits** are received, the length of time determined by the Board in its policy should be reflected in the **district's student's** written agreement. See the section "Master Agreement" below.

Because excessive leniency in the duration of independent study assignments may result in a student falling behind peers and increase the risk of dropping out of school, independent study assignments shall be completed no more than one week after assigned for all grade levels and types of program. **However, w**When necessary based on the specific circumstances of the student's approved program, the Superintendent or designee may allow for a longer period of time between the date an assignment is made and when it is due. **However, in no event shall the due date of an assignment be extended beyond up to** the termination date of the agreement.

Note: Education Code 51747 **mandates** that the Board, in a public hearing, adopt a policy which specifies the level of satisfactory educational progress and the number of missed assignments allowed before an evaluation would be required to determine whether it is in a student's best interest to remain in independent study. The following paragraph specifies a maximum of three assignments and should be revised to reflect the Board's determination of the number of missed assignments that will trigger an evaluation.

The number of missed assignments that will trigger an evaluation must be included in the student's written agreement.

An evaluation shall be conducted to determine whether it is in a student's best interest to remain in independent study whenever the student fails to make satisfactory educational progress and/or misses three assignments. Satisfactory educational progress shall be determined based on all of the following indicators: (Education Code 51747)

1. The student's achievement and engagement in the independent study program, as indicated by the student's performance on applicable student-level measures of student achievement and engagement specified in Education Code 52060

INDEPENDENT STUDY (continued)

2. The completion of assignments, assessments, or other indicators that evidence that the student is working on assignments
3. Learning **of** required concepts, as determined by the supervising teacher
4. Progress towards successful completion of the course of study or individual course, as determined by the supervising teacher

Note: Education Code 51747, as amended by AB 130, **mandates** the Board to adopt policy that includes the provision of content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction. For high schools, this requirement includes access to all courses offered by the district for graduation and approved by the University of California or the California State University as creditable under the A-G admissions criteria. See BP/AR 6143 - Courses of Study.

The Superintendent or designee shall ensure that students participating in independent study are provided with content aligned to grade level standards at a level of quality and intellectual challenge substantially equivalent to in-person instruction. For high schools, this shall include access to all courses offered by the district for graduation and approved by the University of California or the California State University as creditable under the A-G admissions criteria. (Education Code 51747)

Note: Education Code 51747, as amended by AB 130, **mandates** the Board to adopt policy that includes plans, by grade level, to provide students with specified levels of live interaction and/or synchronous instruction as described below and defined in the accompanying administrative regulation. This requirement only applies to students participating in an independent study program for 15 school days or more.

According to CDE's "2021-22 AA & IT Independent Study FAQs," **synchronous instruction for traditional independent study only counts toward meeting the minimum day requirements if students produce a work product that is evaluated for time value as an outcome from their participation in the synchronous instruction.**

The Superintendent or designee shall ensure that students participating in independent study for 15 school days or more receive the following throughout the school year: (Education Code 51747)

1. For students in grades transitional kindergarten, kindergarten, and grades 1 to 3, opportunities for daily synchronous instruction
2. For students in grades 4-8, opportunities for both daily live interaction and at least weekly synchronous instruction
3. For students in grades 9-12, opportunities for at least weekly synchronous instruction

INDEPENDENT STUDY (continued)

Note: Education Code 51747, as amended by AB 130 and AB 167, mandates the Board to adopt policy that includes procedures for tiered reengagement strategies for **students who meet the conditions specified in the following paragraph.** ~~all students who are not generating attendance for more than three school days or 60 percent of the instructional days in a school week.~~ This requirement only applies to students participating in an independent study program for 15 school days or more.

The Superintendent or designee shall ensure that procedures for tiered reengagement strategies are used for all students **who are not generating attendance for more than three school days or 60 percent of the instructional days in a school week, or who are in violation of their written agreement.** ~~This requirement only applies to students participating in an independent study program for 15 school days or more~~ **who** The procedures shall include, but are not necessarily limited to, all of the following: **(Education Code 51747)**

1. **Are not generating attendance for more than three school days or 60 percent of the instructional days in a school week, or 10 percent of required minimum instructional time over four continuous weeks of the district's approved instructional calendar**
2. **Are found to be not participatory pursuant to Section 51747.5 for more than the greater of three schooldays or 60 percent of the scheduled days of synchronous instruction in a school month as applicable by grade span**
3. **Are in violation of their written agreement**

Tiered reengagement strategies procedures used in district independent study programs shall include, but are not necessarily limited to, all of the following: (Education Code 51747)

1. Verification of current contact information for each enrolled student
2. Notification to parents/guardians of lack of participation within one school day of the **absence recording of a non-attendance day** or lack of participation
3. A plan for outreach from the school to determine student needs, including connection with health and social services as necessary

Note: Education Code 51747 requires districts to hold a student-parent-educator conference as defined by Education Code 51745.5, at specified times, as reflected below and in the accompanying regulation.

4. A clear standard for requiring a student-parent-educator conference to review a student's written agreement and reconsider the independent study program's impact on the student's achievement and well-being

INDEPENDENT STUDY (continued)

Note: Education Code 51747, as amended by AB 130, **mandates** the Board to adopt policy that includes a plan to expeditiously, and not longer than five instructional days, transition students whose families wish to return to in-person instruction from independent study. This requirement only applies to students participating in an independent study program for 15 school days or more.

The Superintendent or designee shall develop a plan to transition students whose families wish to return to in-person instruction from independent study expeditiously, and, in no case later, than five instructional days. This requirement only applies to students participating in an independent study program for 15 school days or more. (Education Code 51747)

Note: Education Code 51747, as amended by AB 130, **mandates** the Board to adopt policy providing that a current written agreement (i.e., the "master agreement") will be maintained for each student who participates in independent study and for whom apportionment is claimed. Education Code 51747 provides that no independent study agreement can be valid for longer than one school year. For the 2021-22 school year only, **Education Code 51747, as amended by AB 167, requires** the district **is required** to obtain a signed written agreement for **an independent study program of any length of time no later than 30 days after the first day of instruction in an independent study program or October 15, whichever date comes later.**

In addition, Education Code 51749.5 **mandates** the Board to adopt policy providing that a "learning agreement" be maintained for each student participating in course-based independent study.

See the section "Master Agreement" below for required content of these agreements.

The Superintendent or designee shall ensure that a written master agreement exists for each participating student as prescribed by law. (Education Code 51747, 51749.5)

Note: For the 2021-22 school year only, the district must provide notice with specified components of the independent study option available through Education Code 51747. Education Code 51747, as amended by AB 130, requires that the written information, in addition to being written in English, be written in the primary language if 15 percent or more of the students enrolled in a district that provides instruction in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, speak a single primary language other than English, as determined from the census data submitted to **CDE the California Department of Education.**

The district shall provide written notice to the parents/guardians of all enrolled students of the option to enroll their child in in-person instruction or independent study during the 2021-22 school year. This notice shall be posted on the district's web site, and shall include, at a minimum, information about the right to request a student-parent-educator conference before enrollment, student rights regarding procedures for enrolling, disenrolling, and reenrolling in independent study, and the instructional time, including synchronous and asynchronous learning, that a student will have access to as part of independent study. (Education Code 51747)

Note: Education Code 51747, as amended by AB 130, requires districts to hold a student-parent-educator conference upon the request of a parent/guardian prior to enrollment or disenrollment in independent study. The term student-parent-educator conference is defined in Education 51745.5, and as reflected in the accompanying regulation.

INDEPENDENT STUDY (continued)

Upon the request of the parent/guardian of a student, **and before making a decision about enrolling or disenrolling in independent study and entering into a signing a** written agreement **to do so as described below in the section "Master Agreement,"** the district shall conduct a telephone, videoconference, or in-person student-parent-educator conference or other meeting during which the student, parent/guardian, **and, if requested,** their advocate may ask questions about the educational options, including which curriculum offerings and nonacademic supports will be available to the student in independent study. (Education Code 51747)

Master Agreement

Note: Education Code 51747 **mandates** that, in order to receive apportionments for independent study, the district must adopt and implement policy providing for a signed written independent study agreement which contains the components listed in the following section. Because apportionments are only provided for independent study of three or more consecutive school days pursuant to Education Code 46300, as amended by AB 130, written agreements are required only in such instances.

Education Code 46300.7 states that apportionments shall be received for a student in independent study only if the district receives written permission from the parent/guardian before the independent study begins, specifying the actual dates of participation, methods of study and evaluation, and resources to be made available for the student's independent study. Since all these components are included in the written agreement which the parent/guardian must sign before the commencement of independent study pursuant to Education Code 51747, the parent/guardian's signature on the agreement satisfies the requirement to obtain the parent/guardian's written permission.

For the 2021-22 school year however, the district must obtain a signed written agreement for independent study, **of any length of time**, no later than 30 days after the first day of instruction in independent study **or October 15, whichever date comes later**, pursuant to Education Code 51747, as amended by **AB 130 AB 167**. This requirement is also applicable to independent study for a student who is unable to attend classroom-based instruction due to quarantine or school closure for **COVID-19**.

A written agreement shall be developed and implemented for each student participating in independent study for three or more consecutive school days. (Education Code 46300, 51747; 5 CCR 11703)

However, for the 2021-22 school year only, the district shall obtain a signed written agreement **from each student participating in for an** independent study **program for any length of time**, no later than 30 days after the first day of instruction in **the independent study program**.

~~A written agreement shall be developed and implemented for each student participating in independent study for three or more consecutive school days. (Education Code 46300, 51747; 5 CCR 11703)~~

The agreement shall include general student data, including the student's name, address, grade level, birth date, school of enrollment, and program placement.

INDEPENDENT STUDY (continued)

The independent study agreement for each participating student also shall include, but are not limited to, all of the following: (Education Code 51747; 5 CCR 11700, 11702)

1. The frequency, time, place and manner for submitting the student's assignments, reporting the student's academic progress, and communicating with a student's parent/guardian regarding the student's academic progress
2. The objectives and methods of study for the student's work and the methods used to evaluate that work
3. The specific resources that will be made available to the student, including materials and personnel, and access to Internet connectivity and devices adequate to participate in the educational program and complete assigned work

Note: As described in the section "General Independent Study Requirements" above, pursuant to Education Code 51747, the written agreement must contain statements reflecting Board policy pertaining to (1) the maximum length of time, by grade level and type of program, which may elapse between the time an independent study assignment is made and the date by which the student must complete the assignment and (2) the number of missed assignments allowed before an evaluation would be required to determine whether it is in a student's best interest to remain in independent study. Education Code 51747, as amended by AB 130, also requires that the written agreement contain a statement of the Board's policy regarding the level of satisfactory educational progress for students participating in independent study.

4. A statement of the Board's policy detailing the maximum length of time allowed between an assignment and its completion, the level of satisfactory educational progress, and the number of missed assignments which will trigger an evaluation of whether the student should be allowed to continue in independent study
5. The duration of the independent study agreement, including the beginning and ending dates for the student's participation in independent study under the agreement, with a maximum of one school year
6. A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the student upon completion
7. A statement detailing the academic and other supports that will be provided to address the needs of students who are not performing at grade level, or need support in other areas, such as English learners, students with disabilities with an individualized education program or a Section 504 plan in order to be consistent with their program or plan, students in foster care or experiencing homelessness, and students requiring mental health supports.

INDEPENDENT STUDY (continued)

Note: Pursuant to Education Code 51747, as amended by AB 167, a master agreement is not required to include the following statement for any student who, during the 2021-22 school year, cannot participate in classroom-based instruction due to a quarantine order or school closure due to COVID-19.

8. A statement that independent study is an optional educational alternative in which no student may be required to participate

For the 2021-22 school year, this statement shall not be required for a student's participation in independent study if the student is unable to attend in-person instruction because of a quarantine or school closure mandated by a local or state health order or guidance due to the student's exposure to or infection with COVID-19.

9. In the case of a suspended or expelled student who is referred or assigned to any school, class, or program pursuant to Education Code 48915 or 48917, a statement that instruction may be provided through independent study only if the student is offered the alternative of classroom instruction

(cf. 5144.1 - Suspension and Expulsion/Due Process)

10. Before the commencement of independent study, the agreement shall be signed and dated by the student, the student's parent/guardian or caregiver if the student is under age 18 years, the certificated employee responsible for the general supervision of independent study, and all persons who have direct responsibility for providing assistance to the student.

However, for the 2021-22 school year, the district shall obtain a signed written agreement for independent study from the student, or the student's parent/guardian if the student is less than 18 years of age, the certificated employee who has been designated as having responsibility for the general supervision of independent study, and all persons who have direct responsibility for providing assistance to the **pupil student**, no later than 30 days after the first day of instruction **in the independent study program or October 15, whichever date comes later.**

Written agreements may be signed using an electronic signature that complies with state and federal standards, as determined by the California Department of Education (CDE). (Education Code 51747)

The parent/guardian's signature on the agreement shall constitute permission for the student to receive instruction through independent study.

INDEPENDENT STUDY (continued)**Course-Based Independent Study**

Note: This section is for districts that provide independent study courses to its students. Education Code 51749.5-51749.6, as amended by AB 130, establish a course-based independent study option that may be offered if certain requirements are met, as described below. Education Code 51749.5 **mandates** that boards adopt policies that comply with the legal requirements listed in the following section and any applicable regulations adopted by the State Board of Education.

The following paragraph may be revised to reflect the grade levels offered by the district.

The district's course-based independent study program for students in grades K-12 shall be subject to the following requirements: (Education Code 51749.5)

1. A signed learning agreement shall be completed and on file for each participating student, pursuant to Education Code 51749.6
2. Courses shall be taught under the general supervision of certificated employees who hold the appropriate subject matter credential and are employed by the district or by another district, charter school, or county office of education with which the district has a memorandum of understanding to provide the instruction.

(cf. 4112.2 - Certification)

3. Courses shall be annually certified by Board resolution to be of the same rigor and educational quality and to provide intellectual challenge that is substantially equivalent to in-person, classroom-based instruction, and shall be aligned to all relevant local and state content standards. For high schools, this shall include access to all courses offered by the district for graduation and approved by the University of California or the California State University as creditable under the A-G admissions criteria. The certification shall, at a minimum, include the duration, number of equivalent daily instructional minutes for each school day that student is enrolled, number of equivalent total instructional minutes, and number of course credits for each course, consistent with that of equivalent classroom-based courses. The certification shall also include plans to provide opportunities **throughout the school year**, for students in **grades** transitional kindergarten, kindergarten, and grades 1-3 to receive daily synchronous instruction, for students in grades 4-8, to receive both daily live interaction and at least weekly synchronous instruction, and for students in grades 9-12 to receive at least weekly synchronous instruction.
4. Students enrolled in independent study courses shall meet the applicable age requirements established pursuant to Education Code 46300.1, 46300.4, 47612, and 47612.1, and the applicable residency and enrollment requirements established pursuant to Education Code 46300.2, 47612, 48204, and 51747.3.

INDEPENDENT STUDY (continued)

5. For each student participating in an independent study course, satisfactory educational progress shall be determined based on the student's achievement and engagement in the independent study program, as indicated by their performance on applicable student-level measures of student achievement and student engagement set forth in Education Code 52060, completion of assignments, assessments, or other indicators that evidence that the student is working on assignments, learning of required concepts, as determined by the supervising teacher, and progress toward successful completion of the course of study or individual course, as determined by the supervising teacher.

If satisfactory educational progress in an independent study class is not being made, the teacher shall notify the student and, if the student is under age 18 years, the student's parent/guardian. The teacher shall conduct an evaluation to determine whether it is in the student's best interest to remain in the course or whether the student should be referred to an alternative program, which may include, but is not limited to, a regular school program. A written record of the evaluation findings shall be a mandatory interim student record maintained for three years from the date of the evaluation. If the student transfers to another California public school, the record shall be forwarded to that school.

Procedures for tiered reengagement strategies shall be used for all students who are not making satisfactory educational progress in one or more courses or who are in violation of the written learning agreement, as described in the section "Learning Agreement for Course-Based Independent Study" below. These procedures shall include, but are not necessarily limited to, the verification of current contact information for each enrolled student, notification to parents/guardians of lack of participation within one school day of the absence or lack of participation, a plan for outreach from the school to determine student needs, including connection with health and social services as necessary, and a clear standard for requiring a student-parent-educator conference to review a student's written agreement and reconsider the independent study program's impact on the student's achievement and well-being.

(cf. 5125 - Student Records)

6. Examinations shall be administered by a proctor.
7. Statewide testing results shall be reported and assigned to the school at which the student is enrolled and shall be included in the aggregate results of the district. Test results also shall be disaggregated for purposes of comparisons with the test results of students enrolled in classroom-based courses.

(cf. 6162.51 - State Academic Achievement Tests)

INDEPENDENT STUDY (continued)

8. A student shall not be required to enroll in courses included in the course-based independent study program.
9. The student-teacher ratio in the courses in this program shall meet the requirements of Education Code 51745.6.
10. For each student, the combined equivalent daily instructional minutes for courses in this program and all other courses shall meet applicable minimum instructional day requirements, and the student shall be offered the minimum annual total equivalent instructional minutes pursuant to Education Code 46200-46208.

(cf. 6111 - School Calendar)

(cf. 6112 - School Day)

11. Courses required for high school graduation or for admission to the University of California or California State University shall not be offered exclusively through independent study.
12. A student participating in this program shall not be assessed a fee that is prohibited by Education Code 49011.

(cf. 3260 - Fees and Charges)

13. A student shall not be prohibited from participating in independent study solely on the basis that the student does not have the materials, equipment, or access to Internet connectivity necessary to participate in the course.
14. A student with disabilities, as defined in Education Code 56026, shall not participate in course-based independent study, unless the student's individualized education program specifically provides for that participation.
15. A temporarily disabled student shall not receive individual instruction pursuant to Education Code 48206.3 through course-based independent study.
16. The district shall maintain a plan to transition any student whose family wishes to return to in-person instruction from course-based independent study expeditiously, and, in no case, later than five instructional days.

Learning Agreement for Course-Based Independent Study

Note: Education Code 51749.6, as amended by AB 130, requires that, before enrolling a student in course-based independent study, the district provide the student and, if the student is less than 18 years of age, the student's parent/guardian, with a written learning agreement that includes specified components.

INDEPENDENT STUDY (continued)

Before enrolling a student in a course within this program, the Superintendent or designee shall provide the student and, if the student is under age 18 years, the student's parent/guardian with a written learning agreement that includes all of the following: (Education Code 51749.6)

1. A summary of the district's policies and procedures related to course-based independent study pursuant to Education Code 51749.5
2. The duration of the enrolled course(s) and the number of course credits for each enrolled course, consistent with the Board certifications made pursuant to item #23 of **the Course-Based Independent Study section** above
3. The duration of the learning agreement, which shall not exceed a school year or span multiple school years
4. The learning objectives and expectations for each course, including, but not limited to, a description of how satisfactory educational progress is measured and when a student evaluation is required to determine whether the student should remain in the course or be referred to an alternative program, which may include, but is not limited to, a regular school program
5. The specific resources that will be made available to the student, including materials and personnel, and access to Internet connectivity and devices adequate to participate in the educational program and complete assigned work
6. A statement detailing the academic and other supports that will be provided to address the needs of students who are not performing at grade level, or need support in other areas, such as English learners, students with disabilities with an individualized education program or a Section 504 plan in order to be consistent with their program or plan, students in foster care or experiencing homelessness, and students requiring mental health supports.
7. A statement that enrollment is an optional educational alternative in which no student may be required to participate. In the case of a student who is suspended or expelled, or who is referred or assigned to any school, class, or program pursuant to Education Code 48915 or 48917, the agreement also shall include the statement that instruction may be provided to the student through course-based independent study only if the student is offered the alternative of classroom instruction.
8. The manner, time, frequency, and place for submitting a student's assignments, for reporting the student's academic progress, and for communicating with a student's parent/guardian regarding a student's academic progress.

INDEPENDENT STUDY (continued)

9. The objectives and methods of study for the student's work, and the methods used to evaluate that work.
10. A statement of the adopted policies regarding the maximum length of time allowed between the assignment and the completion of a student's assigned work, the level of satisfactory educational progress, and the number of missed assignments allowed before an evaluation of whether the student should be allowed to continue in course-based independent study.
11. A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the learning agreement, to be earned by the student upon completion.
12. **For 2022-23 school year and thereafter, B**before the commencement of an independent study course, the learning agreement shall be signed and dated by the student, **and by** the student's parent/guardian or caregiver; if the student is less than 18 years of age, the certificated employee who has been designated as having responsibility for the general supervision of the independent study course, and all persons who have direct responsibility for providing assistance to the student. For purposes of this paragraph "caregiver" means a person who has met the requirements of Family Code 6550-6552.

However, fFor the 2021-22 school year only, the district shall obtain a signed written agreement for independent study from the student, or the student's parent/guardian if the student is less than 18 years of age, the certificated employee who has been designated as having responsibility for the general supervision of the independent study course, and all persons who have direct responsibility for providing assistance to the pupil no later than 30 days after the first day of instruction.

Written agreements may be signed using an electronic signature that complies with state and federal standards, as determined by the CDE. (Education Code 51749.6)

The-A signed learning agreement from a parent/guardian of a student who is less than 18 years of age shall constitute student's or the parent/guardian's signature shall constitute permission for the student to receive instruction through **course-based** independent study. (Education Code 51749.6)

The Superintendent or designee shall retain a physical or electronic copy of the signed learning agreement for at least three years and as appropriate for auditing purposes. (Education Code 51749.6)

INDEPENDENT STUDY (continued)

Upon the request of a student's parent/guardian, and before signing a written agreement as described above, the district shall conduct a telephone, videoconference, or in-person student-parent-educator conference, or other meeting during which the student, parent/guardian, or their advocate may ask questions about the educational options, including which curriculum offerings and nonacademic supports will be available to the student in independent study. (Education Code 51749.6)

Student-Parent-Educator Conferences

Note: Education Code 51747 and 51749.5, as amended by AB 130, require districts to hold student-parent-educator conferences as defined by Education Code 51745.5, at specified times. See the accompanying regulation for the definition of student-parent-educator conference.

A student-parent-educator conference shall be held as appropriate including, but not limited to, as a reengagement strategy and/or, if requested by a parent/guardian, prior to enrollment or disenrollment from independent study. (Education Code 51745.5, 51747, 51749.5)

Records for Audit Purposes

Note: Education Code 51745.6, 51747, 51747.5, and 51749.5, as amended by AB 130, require, commencing in the 2021-22 fiscal year, the State Controller to incorporate verifications of compliance with specified components of the laws into the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting to the extent that these verifications are not yet included in the audit guide, with loss of apportionment for independent study for districts found to be noncompliant.

The Superintendent or designee shall ensure that records are maintained for audit purposes. These records shall include, but not be limited to: (Education Code 51748; 5 CCR 11703)

1. A copy of the Board policy, administrative regulation, and other procedures related to independent study
2. A listing of the students, by grade level, program, and school, who have participated in independent study, along with the units of the curriculum attempted and completed by students in grades K-8 and the course credits attempted by and awarded to students in grades 9-12 and adult education
3. A file of all agreements, with representative samples of each student's work products bearing the supervising teacher's notations indicating that the teacher has personally evaluated the work or personally reviewed the evaluations made by another certificated teacher

INDEPENDENT STUDY (continued)

4. As appropriate to the program in which the students are participating, a daily or hourly attendance register that is separate from classroom attendance records, maintained on a current basis as time values of student work products judged by a certificated teacher, and reviewed by the supervising teacher if they are two different persons
5. Appropriate documentation of compliance with the teacher-student ratios required by Education Code 51745.6 and 51749.5 (Education Code 51745.6 and 51749.5)
6. Appropriate documentation of compliance with the requirements pursuant to Education Code 51747.5 to ensure the coordination, evaluation, and supervision of the independent study of each student by a district employee who possesses a valid certification document pursuant to Education Code 44865 or an emergency credential pursuant to Education Code 44300 (Education Code 51747.5)

Note: Education Code 51747.5, as amended by AB 130, requires districts to document each student's participation in live interaction and synchronous instruction pursuant to Education Code 51747 on each school day, as applicable, in whole or in part, for which **the student is independent study is provided independent study**. A student who does not participate **in independent study on** a school day **shall must** be documented as nonparticipatory for that school day. In addition, Education Code 51747.5 requires districts to maintain written or computer-based evidence of student engagement that includes, but is not limited to, a grade book or summary document that, for each class, lists all assignments, assessments, and associated grades. Commencing in the 2021-22 fiscal year, the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting will incorporate compliance reviews of these requirements, **and a finding of noncompliance will result in loss of apportionment in proportion to the impact on ADA from the noncompliance.**

The district shall document each student's participation in live interaction and synchronous instruction pursuant to Education Code 51747 on each school day, as applicable, in whole or in part, for which **live interaction or synchronous instruction is provided as part of the independent study program is provided**. A student who does not participate in **independent study scheduled live interaction or synchronous instruction on a school day** shall be documented as nonparticipatory for that school day. (Education Code 51747.5)

The Superintendent or designee **also** shall **also** maintain a written or computer-based record such as a grade book or summary document of student engagement, for each class, of all grades, assignments, and assessments for each student for independent study assignments. (Education Code 51747.5)

(cf. 3580 - District Records)

INDEPENDENT STUDY (continued)

Note: Education Code 51747 authorizes specified records to be maintained in an electronic file, as provided in the following paragraph. Pursuant to Education Code 51747, an electronic file includes a computer or electronically stored image of an original document, including, but not limited to, a PDF, JPEG, or other digital file type, that may be sent via fax machine, email, or other electronic means.

The signed, dated agreement, any supplemental agreement, assignment records, work samples, and attendance records may be maintained on file electronically. (Education Code 51747)

Program Evaluation

Note: The following **optional** section may be revised to reflect district practice.

The Superintendent or designee shall annually report to the Board the number of district students participating in independent study, the average daily attendance generated for apportionment purposes, student performance as measured by standard indicators and in comparison, to students in classroom-based instruction, and the number and proportion of independent study students who graduate or successfully complete independent study. Based on the program evaluation, the Board and Superintendent shall determine areas for program improvement as needed.

(cf. 0500 - Accountability)

(cf. 5121 - Grades/Evaluation of Student Achievement)

(cf. 6162.5 - Student Assessment)

Legal Reference: (see next page)

INDEPENDENT STUDY (continued)

Legal Reference:

EDUCATION CODE

17289 Exemption for facilities

41020 Audit guidelines

41422 Apportionment credit for student inability to attend in-person or school closure due to COVID-19

41976.2 Independent study programs; adult education funding

42238 Revenue limits

42238.05 Local control funding formula; average daily attendance

44865 Qualifications for home teachers and teachers in special classes and schools

46100 Length of school day

46200-46208 Instructional day and year

46300-46307.1 Methods of computing average daily attendance

46390-46393 Emergency average daily attendance

46600 Interdistrict attendance computation

47612-47612.1 Charter school operation

47612.5 Independent study in charter schools

48204 Residency

48206.3 Home or hospital instruction; students with temporary disabilities

48220 Classes of children exempted

48340 Improvement of pupil attendance

48915 Expulsion; particular circumstances

48916.1 Educational program requirements for expelled students

48917 Suspension of expulsion order

49011 Student fees

51225.3 Requirements for high school graduation

51745-51749.6 Independent study programs

52060 Local control and accountability plan

52522 Adult education alternative instructional delivery

52523 Adult education as supplement to high school curriculum; criteria

56026 Individuals with exceptional needs

58500-58512 Alternative schools and programs of choice

FAMILY CODE

6550-6552 Authorization affidavits

CODE OF REGULATIONS, TITLE 5

11700-11703 Independent study

UNITED STATES CODE, TITLE 20

6301 Highly qualified teachers

6311 State plans

COURT DECISIONS

Modesto City Schools v. Education Audits Appeal Panel, (2004) 123 Cal.App.4th 1365

Management Resources: (see next page)

INDEPENDENT STUDY (continued)

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

2021-22 AA & IT Independent Study FAQs, 2021

Clarifications for Student Learning in Quarantine, 2021

Conducting Individualized Determinations of Need, 2021

Legal Requirements for Independent Study, 2021

Elements of Exemplary Independent Study

California Digital Learning Integration and Standards Guidance, April 2021

EDUCATION AUDIT APPEALS PANEL PUBLICATIONS

Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting

WEB SITES

California Consortium for Independent Study: <http://www.ccis.org>

California Department of Education, Independent Study: <http://www.cde.ca.gov/sp/eo/is>

Education Audit Appeals Panel: <http://www.eaap.ca.gov>

(12/14 7/21) 12/21

CSBA Sample

Administrative Regulation

Instruction

AR 6158(a)

INDEPENDENT STUDY

Definitions

Note: Education Code 51745.5, as added by AB 130 (Ch. 44, Statutes of 2021), defines the terms "live interaction," "student-parent-educator conference," and "synchronous instruction" as provided below.

Live interaction means interaction between the student and classified or certificated staff, and may include peers, provided for the purpose of maintaining school connectedness, including, but not limited to, wellness checks, progress monitoring, provision of services, and instruction. This interaction may take place in person, or in the form of Internet or telephonic communication. (Education Code 51745.5)

Student-parent-educator conference means a meeting involving, at a minimum, all parties who signed the student's written independent study agreement pursuant to Education Code 51747 or the written learning agreement pursuant to Education Code 51749.6. (Education Code 51745.5)

Synchronous instruction means classroom-style instruction or designated small group or one-on-one instruction delivered in person, or in the form of Internet or telephonic communications, and involving live two-way communication between the teacher and student. Synchronous instruction shall be provided by the teacher of record for that student pursuant to Education Code 51747.5 **or the certificated employee providing instruction for course-based independent study.** (Education Code 51745.5)

Educational Opportunities

Note: Pursuant to Education Code 51745, as amended by AB 130, the district is required to offer independent study to meet the educational needs of students for the 2021-22 school year unless the district obtains a waiver from such requirement.

For the 2021-22 school year, the district shall offer independent study to meet the educational needs of students as specified in Education Code 51745 unless the district has obtained a waiver. (Education Code 51745)

Note: The following section is **optional**. Education Code 51745 lists educational opportunities that may be provided through independent study. The district may revise or expand items #1-6 below to reflect district practice.

Educational opportunities offered through independent study may include, but are not limited to: (Education Code 51745)

1. Special assignments extending the content of regular courses of instruction

INDEPENDENT STUDY (continued)

(cf. 6143 - Courses of Study)

2. Individualized study in a particular area of interest or in a subject not currently available in the regular school curriculum
3. Individualized alternative education designed to teach the knowledge and skills of the core curriculum, but not provided as an alternative curriculum
4. Continuing and special study during travel

(cf. 5112.3 - Student Leave of Absence)

5. Volunteer community service activities and leadership opportunities that support and strengthen student achievement

Note: Education Code 51745, as amended by AB 167, permits districts to provide independent study to students who cannot participate in classroom-based instruction due to a COVID-19 quarantine. See the accompanying board policy.

6. Individualized study for a student whose health, as determined by the student's parent/guardian, would be put at risk by in-person instruction **or for a student who is unable to attend in-person instruction due to a quarantine due to exposure to, or infection with, COVID-19, pursuant to local or state public health guidance**

(cf. 0420.4 - Charter School Authorization)

(cf. 6142.4 - Service Learning/Community Service Classes)

(cf. 6181 - Alternative Schools/Programs of Choice)

In addition, when requested by a parent/guardian due to an emergency or illness, independent study may be used on a short-term basis to ensure that the student is able to maintain academic progress in the student's regular classes.

(cf. 5113 - Absences and Excuses)

Note: The following paragraph is for use by districts maintaining high schools.

No course required for high school graduation shall be offered exclusively through independent study. (Education Code 51745)

(cf. 6146.1 - High School Graduation Requirements)

INDEPENDENT STUDY (continued)**Equivalency**

The district's independent study option shall be substantially equivalent in quality and quantity to classroom instruction to enable participating students to complete the district's adopted course of study within the customary timeframe. Students in independent study shall have access to the same services and resources that are available to other students in the school and shall have equal rights and privileges. (5 CCR 11700, 11701.5)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

Students participating in independent study shall have access to Internet connectivity and devices adequate to participate in the educational program and complete assigned work. (Education Code 51747)

The district shall not provide independent study students and their parents/guardians with funds or items of value that are not provided for other students and their parents/guardians. Providing access to Internet connectivity and local educational agency-owned devices adequate to participate in an independent study program and complete assigned work consistent with Education Code 51747, or to participate in an independent study course, as authorized by Education Code 51749.5, shall not be considered funds or other things of value. (Education Code 46300.6, 51747.3)

Eligibility for Independent Study

Note: Pursuant to Education Code 51748, independent study students must be enrolled in school as a condition of receiving state apportionments.

Students are eligible for independent study as authorized in law, and as specified in board policy and administrative regulation. To participate in independent study, a student shall be enrolled in a district school. (Education Code 51748)

Note: The following optional paragraph may be revised to reflect district practice.

For the 2022-23 school year and thereafter, the Superintendent or designee may approve the participation of a student who demonstrates the motivation, commitment, organizational skills, and academic skills necessary to work independently provided that experienced certificated staff are available to effectively supervise students in independent study. The Superintendent or designee may also approve the participation of a student whose health would be put at risk by in-person instruction. A student whose academic performance is not at grade level may participate in independent study only if the program is able to provide appropriate support, such as supplemental instruction, tutoring, counseling, ongoing diagnostic assessments, and/or differentiated materials, to enable the student to be successful. For an elementary student, the Superintendent or designee may consider the parent/guardian's level of commitment to assist the student.

INDEPENDENT STUDY (continued)

Note: The following paragraph limits eligibility for independent study to those students for whom state apportionments can be claimed. Education Code 46300.2 provides that districts will receive state funding for independent study for students who are residents of the county or an adjacent county. Pursuant to Education Code 51747.3, students whose residency status is based on parent/guardian employment within district boundaries (Education Code 48204(b)) are not eligible for funds apportioned for average daily attendance (ADA).

A student participating in independent study must be a resident of the county or an adjacent county. Full-time independent study shall not be available to students whose district residency status is based on their parent/guardian's employment within district boundaries pursuant to Education Code 48204. (Education Code 46300.2, 51747.3)

(cf. 5111.1 - District Residency)

A student with disabilities, as defined in Education Code 56026, shall not participate in independent study unless the student's individualized education program specifically provides for such participation. (Education Code 51745)

(cf. 6159 - Individualized Education Program)

Note: Education Code 51747, as amended by AB 167, relaxes certain independent study requirements for the 2021-22 school year for students who cannot participate in classroom-based instruction as a result of a quarantine order or school closure due to COVID-19, including the limitation on providing a temporarily disabled student individual instruction pursuant to Education Code 48206.3 by means of independent study.

With the exception of students who, during the 2021-2022 school year, cannot participate in classroom-based instruction due to a COVID-19 quarantine or school closure, A a temporarily disabled student shall not receive individual instruction pursuant to Education Code 48206.3 by means of independent study. (Education Code 51745 51747)

(cf. 6183 - Home and Hospital Instruction)

Note: Education Code 46300.1 provides that the district may not receive apportionments pursuant to Education Code 42238 for independent study for students age 21 or older, or for students 19 or older who have not been continuously enrolled in grades K-12 since their 18th birthday. However, pursuant to Education Code 46300.4, these students may be eligible for independent study through the adult education program for courses required for high school graduation. See BP/AR 6200 - Adult Education.

Students age 21 or older, and students age 19 or older who have not been continuously enrolled in school since their 18th birthday, may participate in independent study only through the adult education program for the purpose of enrolling in courses required for a high school diploma by Education Code 51225.3 or the Governing Board. (Education Code 46300.1, 46300.4)

(cf. 6200 - Adult Education)

INDEPENDENT STUDY (continued)

Note: The following paragraph limits enrollment in independent study to those students for whom state apportionments can be claimed. Pursuant to Education Code 51745, no more than 10 percent of the students enrolled in a continuation high school or opportunity school or program are eligible for apportionment credit for independent study. A pregnant student or a parenting student who is the primary caregiver for the student's child(ren) is not included in this cap.

No more than 10 percent of the students enrolled in a continuation high school or opportunity school or program, not including pregnant students and parenting students who are primary caregivers for one or more of their children, shall be enrolled in independent study. (Education Code 51745)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6184 - Continuation Education)

Monitoring Student Progress

Note: The following **optional** section may be revised to reflect district practice.

The independent study administrator and/or supervising teacher shall promptly and directly address any failure by the student to meet the terms of the student's written agreement. The following supportive strategies may be used:

1. A letter to the student and/or parent/guardian
2. A meeting between the student and the teacher and/or counselor
3. A meeting between the student and the independent study administrator, including the parent/guardian if appropriate
4. An increase in the amount of time the student works under direct supervision

When the student has failed to make satisfactory educational progress or missed the number of assignments specified in the written agreement as requiring an evaluation, the Superintendent or designee shall conduct an evaluation to determine whether or not independent study is appropriate for the student. This evaluation may result in termination of the independent study agreement and the student's return to the regular classroom program or other alternative program.

A written record of the findings of any such evaluation shall be treated as a mandatory interim student record which shall be maintained for three years from the date of the evaluation. (Education Code 51747)

INDEPENDENT STUDY (continued)

Responsibilities of Independent Study Administrator

Note: The following **optional** section may be revised to reflect district practice.

The responsibilities of the independent study administrator include, but are not limited to:

1. Recommending certificated staff to be assigned as independent study teachers at the required teacher-student ratios pursuant to Education Code 51745.6 and supervising staff assigned to independent study functions who are not regularly supervised by another administrator
2. Approving or denying the participation of students requesting independent study
3. Facilitating the completion of written independent study agreements
4. Ensuring a smooth transition for students into and out of the independent study mode of instruction
5. Approving all credits earned through independent study
6. Completing or coordinating the preparation of all records and reports required by law, Board policy, or administrative regulation

Assignment and Responsibilities of Independent Study Teachers

Each student's independent study shall be coordinated, evaluated, and carried out under the general supervision of a district employee who possesses a valid certification document pursuant to Education Code 44865 or emergency credential pursuant to Education Code 44300, registered as required by law, and who consents to the assignment. (Education Code 44865, 51747.5; 5 CCR 11700)

Note: Pursuant to Education Code 51745.6, the equivalency of teacher-student ratios as described below is a necessary condition for the district to receive apportionments for independent study. The district may exceed these ratios, but those additional units of independent study ADA would not be funded.

Pursuant to Education Code 51745.6, as amended by AB 130, the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting must incorporate verification of applicable teacher-student ratios commencing in the 2021-22 fiscal year.

The ratio of student average daily attendance for independent study students age 18 years or younger to full-time equivalent certificated employees responsible for independent study shall not exceed the equivalent ratio for all other education programs in the district, unless a new higher or lower ratio for all other educational programs offered is negotiated in a

INDEPENDENT STUDY (continued)

collective bargaining agreement or the district enters into a memorandum of understanding that indicates an existing collective bargaining agreement contains an alternative ratio. (Education Code 51745.6)

Note: The remainder of this section is **optional** and may be revised to reflect district practice.

The responsibilities of the supervising teacher shall include, but are not limited to:

1. Completing designated portions of the written independent study agreement and signing the agreement
2. Supervising and approving coursework and assignments
3. Maintaining records of student assignments showing the date the assignment is given and the date the assignment is due
4. Maintaining a daily or hourly attendance register in accordance with item #4 in the section on "Records for Audit Purpose" in the accompanying Board policy
5. Providing direct instruction and counsel as necessary for individual student success
6. Regularly meeting with the student to discuss the student's progress

Note: Pursuant to Education Code 51747.5, **as amended by AB 167**, the district may only claim apportionment credit for independent study based on the time value of student work products as personally judged in each instance by a certificated teacher **employed by the district**. Education Code 51747.5 specifies that the teacher is not required to sign and date the work products.

7. Determining the time value of assigned work or work products completed and submitted by the student
8. Assessing student work and assigning grades or other approved measures of achievement

Note: Education Code 51747.5, as amended by AB 130 **and AB 167**, requires districts to document each student's participation in live interaction and synchronous instruction pursuant to Education Code 51747 on each school day, as applicable, in whole or in part, for which **live interaction or synchronous instruction is provided as part of the independent study program** ~~is provided~~. A student who does not participate in **scheduled live interaction or synchronous instruction independent study** on a school day shall be documented as nonparticipatory for that school day, **for purposes of student participation reporting and tiered reengagement pursuant to Education Code 51747**.

INDEPENDENT STUDY (continued)

9. Documenting each student's participation in live interaction and/or synchronous instruction pursuant to Education Code 51747 on each school day, **as applicable, in whole or in part, for which live interaction or synchronous instruction is provided as part of the independent study is provided program**

The Superintendent or designee shall ensure that independent study teachers have access to professional development and support comparable to classroom-based teachers.

(cf. 4131 - Staff Development)

(7/16 7/21) 12/21

CSBA Sample Board Policy

Instruction

BP 6164.5(a)

STUDENT SUCCESS TEAMS

Note: The following optional policy should be revised to reflect district practice. Utilization of the student success team (SST) process is not required by state or federal law. As such, this Board policy reflects best practices rather than legal requirements.

The "student success team" (SST), formerly called "student study team," is an early intervention process that brings together the student, parents/guardians, certificated and classified staff, teachers and administrators, and/or the student, as appropriate, to identify student needs and develop an improvement plan to address those needs. Student success teams are a key component of the special education program and the drop-out prevention programs; however, the California Department of Education encourages making this process available to all students in all schools. The following optional policy should be revised to reflect district practice.

The Governing Board encourages the collaboration of parents/guardians, certificated and classified staff, teachers, resource personnel, administrators, and/or the students, as appropriate, in evaluating the strengths and needs of students having academic, attendance, social, emotional, or behavioral difficulties and in identifying strategies and programs that may assist such the students in maximizing their potential. The Superintendent or designee shall establish student success teams (SST) as needed to address individual students' needs.

(cf. 5113.1 - Chronic Absence and Truancy)

(cf. 5147 - Dropout Prevention)

(cf. 6159 - Individualized Education Program)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

(cf. 6164.6 - Identification and Education under Section 504)

The Superintendent or designee shall establish and maintain a process for initiating the referrals of students to the SSTs student success team, which may include referral by district staff, parents/guardians, and/or agency representatives. The Superintendent or designee may also establish and maintain a process for responding to SST referrals, which may include a determination by the district as to whether an SST shall be convened for an individual student.

Each SST may collect and analyze relevant student data, as appropriate. The SST may also review the student's educational history, work samples, strengths and areas for growth, and identify available resources and strategies.

(cf. 5022 - Student and Family Privacy Rights)

(cf. 5121 - Grades/Evaluation of Student Achievement)

(cf. 5125 - Student Records)

(cf. 5141.6 - School Health Services)

(cf. 6162.5 - Student Assessment)

(cf. 6162.51 - State Academic Achievement Tests)

(cf. 6164.2 - Guidance/Counseling Services)

STUDENT SUCCESS TEAMS (continued)

Each **SST student success team** shall develop a plan to support the student which **incorporates** intervention strategies to assist the student. Such strategies may include changes in program placement or instructional methods, recommendation of supplemental educational services, parent involvement strategies, **social, emotional and/or** behavioral interventions, discipline, referrals to other agencies or resources, and/or other appropriate interventions.

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 5123 - Promotion/Acceleration/Retention)

(cf. 5141.3 - Health Examinations)

(cf. 5141.5 - Mental Health)

(cf. 5141.6 - School Health Services)

(cf. 5144 - Discipline)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6020 - Parent Involvement)

(cf. 6120 - Response to Instruction and Intervention)

(cf. 6158 - Independent Study)

(cf. 6159 - Individualized Education Program)

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

(cf. 6164.2 - Guidance/Counseling Services)

(cf. 6171 - Title I Programs)

(cf. 6172 - Gifted and Talented Student Program)

(cf. 6173 - Education for Homeless Children)

(cf. 6173.1 - Education for Foster Youth)

(cf. 6173.2 - Education of Children of Military Families)

(cf. 6174 - Education for English Learners)

(cf. 6175 - Migrant Education Program)

(cf. 6176 - Weekend/Saturday Classes)

(cf. 6177 - Summer Learning Programs)

(cf. 6178 - Career Technical Education)

(cf. 6178.1 - Work-Based Learning)

(cf. 6179 - Supplemental Instruction)

(cf. 6181 - Alternative Schools/Programs of Choice)

(cf. 6183 - Home and Hospital Instruction)

(cf. 6184 - Continuation Education)

(cf. 6185 - Community Day School)

The **SST student success team** shall monitor the student's progress, evaluate the extent to which the recommended strategies have been implemented, **make adjustments to the plan**, and develop additional interventions as needed.

Note: Pursuant to Education Code 56303, a student should be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. However, the U.S. Department of Education's Office of Special Education Programs Memorandum 11-07 emphasizes that districts have an obligation to ensure that evaluations of students suspected of having a disability are not delayed or denied because of the implementation of response to intervention strategies, such as the SST process.

STUDENT SUCCESS TEAMS (continued)

The SST process shall not delay or deny a referral for evaluation for eligibility for special education, as may be required under state or federal law.

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

Note: Districts that have established multi-tiered systems of support (MTSS) may integrate SSTs into such frameworks. The California Department of Education describes MTSS as an integrated, comprehensive framework for districts that focuses on common core state standards, core instruction, differentiated and student-centered learning, individualized student needs, and the alignment of systems necessary for academic, behavioral, and social success. MTSS is connected to the eight state priorities in the local control and accountability plan, and encompasses inclusive academic instruction as reflected in the California state standards and frameworks, response to instruction and intervention, behavior instruction such as positive behavioral interventions and supports and restorative practices, and social-emotional learning.

The following paragraph is optional and should be deleted by districts that do not have an established MTSS.

The Superintendent or designee may integrate SSTs into the district's multi-tiered system of support, including identification of students who need additional support, the level(s) of support, appropriate interventions, monitoring of progress, and whether the goal of intervention has been met.

(cf. 0460 - Local Control and Accountability Plan)

To strengthen the effectiveness of SSTs, the Superintendent or designee may provide staff development in the identification of students who may need additional support, implementation of measurable and targeted interventions, and monitoring of progress and goal attainment.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

Legal Reference: (see next page)

STUDENT SUCCESS TEAMS (continued)

Legal Reference:

EDUCATION CODE

8800-8807 Healthy Start support services for children

48260-48273 Truancy

48400-48454 Continuation education

49600-49604 Educational counseling

51745-51749.651749.3 Independent study programs

52060-52077 Local control and accountability plan

54400-54425 Programs for disadvantaged children

54440-54445 Migrant children

56300-56305 Identification and referral

WELFARE AND INSTITUTIONS CODE

4343-4352.5 Primary interventions program, mental health

18986.40-18986.46 Interagency children's services

Management Resources:

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Best Practices in Special Education, Governance Brief, May 2019

CDE PUBLICATIONS

SB 65 School Based Pupil Motivation and Maintenance Program Guidelines (2000-01 Edition), 2000

Student Success Teams: Supporting Teachers in General Education, 1997

CALIFORNIA DROPOUT PREVENTION NETWORK PUBLICATIONS

SST: Student Success Teams, 2000

U.S DEPARTMENT OF EDUCATION PUBLICATIONS

Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act, August 2021

A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA): Memorandum 11-07, January 2011

WEB SITES

California Department of Education, multi-tiered systems of support: <http://www.cde.ca.gov/ci/cv/ri/http://www.cde.ca.gov/sp/branch/ssp>

California Dropout Prevention Network: <http://www.edalliance.org/edpn>

National Dropout Prevention Center: <http://www.dropoutprevention.org>

U.S Department of Education, Office of Special Education Programs:

<https://www2.ed.gov/about/offices/list/osep/osep>

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CSBA Sample Administrative Regulation

Instruction

AR 6164.5(a)

STUDENT SUCCESS TEAMS

Note: The following **optional** administrative regulation maybe revised to reflect district practice.

Utilization of the Student Success Team (SST) process is not required by state or federal law. As such, this administrative regulation reflects best practices rather than legal requirements.

Team Membership

Members of individual student success teams **(SST)** may include:

1. The principal or designee
2. One or more of the student's classroom teachers or former teachers
3. The student's parents/guardians
4. The student if appropriate
5. **School Counselor(s)**
65. Resource personnel or specialists, such as a school ~~counselor~~, psychologist, nurse, outreach consultant, special education resource person, ~~categorically funded staff person~~, department chairperson, speech and language specialist, reading specialist, social worker, probation officer, community resource representative, mental health worker, **and/or other person(s)** relevant to the student's situation, **as determined by the district**

The makeup of each individual SST is at the district's discretion, and may not include participation from individuals in each of the categories listed above.

Team Responsibilities

Note: The Superintendent or designee may appoint a districtwide or schoolwide SST coordinator to coordinate SST meetings and related activities.

The principal or designee shall:

1. Schedule meetings and establish meeting procedures
2. Contact parents/guardians and other team members regarding team meetings

STUDENT SUCCESS TEAMS (continued)

3. Consult with appropriate school **staff, including teachers and/or** district resource personnel
4. Arrange for observation of the student **in the problem situation as needed**
5. Collect any additional background information necessary to inform team members about the student's strengths and needs, **such as relevant student data, educational history, and work samples, as appropriate**

(cf. 5022 - Student and Family Privacy Rights)

(cf. 5121 - Grades/Evaluation of Student Achievement)

(cf. 5125 - Student Records)

(cf. 6162.5 - Student Assessment)

(cf. 6162.51 - State Academic Achievement Tests)

6. Help the student and parents/guardians prepare for the meeting
7. Facilitate the team meetings

8. Develop a plan to support the student which incorporates intervention strategies

(cf. 3552 - Summer Meal Program)

(cf. 3553 - Free and Reduced Price Meals)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5141.5 - Mental Health)

(cf. 5141.52 - Suicide Prevention)

(cf. 5141.6 - School Health Services)

(cf. 5144 - Discipline)

(cf. 6141.4 - International Baccalaureate Program)

(cf. 6141.5 - Advanced Placement)

(cf. 6152 - Class Assignment)

(cf. 6152.1 - Placement in Mathematics Courses)

(cf. 6158 - Independent Study)

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

(cf. 6164.2 - Guidance/Counseling Services)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

(cf. 6164.6 - Identification and Education under Section 504)

(cf. 6172 - Gifted and Talented Student Program)

(cf. 6172.1 - Concurrent Enrollment in College Classes)

(cf. 6176 - Weekend/Saturday Classes)

(cf. 6177 - Summer Learning Programs)

(cf. 6178 - Career Technical Education)

(cf. 6178.1 - Work-Based Learning)

(cf. 6179 - Supplemental Instruction)

(cf. 6181 - Alternative Schools/Programs of Choice)

(cf. 6183 - Home and Hospital Instruction)

(cf. 6184 - Continuation Education)

(cf. 6185 - Community Day School)

STUDENT SUCCESS TEAMS (continued)

- 98.** Ensure that the student's progress is monitored, and that follow-up meetings are regularly scheduled, and that adjustments are made to the plan and related interventions as necessary

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CSBA Sample Board Policy

Facilities

BP 7211(a)

DEVELOPER FEES

Note: Developer fees are one method of financing facilities available to the district. As amended by SB 50 (Ch. 407, Statutes of 1998), Government Code 65995 prohibit cities and counties from requiring development fees in excess of the maximum amounts set forth in Education Code 17620 to help fund school facilities. Government Code 65995 and, as amended by AB 127 (Ch. 35, Statutes of 2006), Government Code 65997 essentially repeal, until 2012, the Mira/Hart/Murrietta line of case law which had granted cities or counties the authority to deny development projects based on a determination as to whether school facilities were adequate to meet the demands created by the development. Districts with current Mira agreements should consult legal counsel in order to determine whether that agreement can be "grandfathered," and therefore exempted from the SB 50 requirements.

See AR 7211 for detailed findings that must be made by the Governing Board prior to the levying of any developer fees. The following policy and regulation are optional.

The following policy is optional. Education Code 17620-17621 and Government Code 65995-65995.7 provide authority for three levels of developer fees that may be levied by school districts on residential, commercial, and industrial construction to mitigate the impact of increased enrollment on school facilities. Before imposing developer fees, the Governing Board must conduct a fee justification study and comply with other requirements.

Due to the failure of state bond measure Proposition 13 in March 2020, Government Code 65997 is operative until a new state bond measure is approved. Pursuant to Government Code 65997, public agencies may, on the basis of the inadequacy of school facilities, deny or refuse to approve a "legislative" act but may not require the payment of a fee in excess of that imposed pursuant to Government Code 65995-65995.7. Courts have distinguished between legislative acts (e.g., zoning ordinances) and adjudicative acts (e.g., subdivision approvals, variances, and conditional use permits). Districts with specific questions as to the operation of Government Code 65997 should consult legal counsel.

Level 1 fees, the basic mitigation fee, may be applied to residential, commercial, and industrial construction projects and must be within the limits established by law and the State Allocation Board (SAB). Level 2 fees apply only to residential construction, and the amount of the fee varies across districts as determined through a school facilities needs analysis. Level 3 fees may be double the amount of Level 2 fees, but may only be collected when SAB certifies that state funds for new school facility construction are not available.

Pursuant to Education Code 17620, some types of construction may be exempted from the developer fee. Districts should consult with legal counsel as appropriate.

In order to finance the construction or reconstruction of school facilities needed to accommodate ~~students coming~~ increased student enrollment resulting from new development, the Governing Board may establish, levy, and collect developer fees on residential, commercial, and industrial construction within the district, subject to restrictions specified by law and administrative regulation.

DEVELOPER FEES (continued)**Level 1 Funding Fees: Residential, Commercial and Industrial Construction**

Note: In order to levy or increase developer fees, Government Code 66001 requires that a district develop a Fee Justification Study which justifies the amount of the fee. The State Allocation Board sets the developer fee rates; these rates will be increased. For Level 1 fees, Government Code 65995 establishes a maximum amount of fee, which is adjusted for inflation by SAB every two years. In order to levy developer fees, Government Code 66001 requires that the Board conduct a fee justification study which demonstrates a reasonable relationship between residential, commercial, and industrial development in the district and the need for additional school facilities. It is important to note that, in order to increase their rates, Pursuant to Government Code 66001 and 66016, before increasing any fee, requires districts to must update their fee justification study and to satisfy the notice and hearing requirements, as specified below. Education Code 17622 requires separate, special findings when levying fees on spaces enclosed for agricultural purposes.

Courts have held that boards must be able to show that a valid method was used in the fee justification study. In Summerhill Winchester LLC v. Campbell Union School District, the Court of Appeal concluded that a fee justification study must include the following three factors: (1) a projection of the total amount of new housing expected to be built within the district; (2) an estimate of how many students will be generated by the new development; and (3) an estimate of what it will cost to provide the necessary school facilities for the new students. Districts with questions about the adequacy of a fee justification study or how to analyze the reasonableness of a fee in relation to the type of development at issue should consult legal counsel.

Before taking action to establish, increase, or impose **Level 1** developer fees, the Governing Board shall conduct a fee justification study which: (Government Code 66001)

1. Identifies the purpose of the fee and the use to which the fee will be put
2. Determines a reasonable relationship between the fee's use and the type of development project for which the fee is imposed
3. Determines a reasonable relationship between the need for the public facility and the type of development project for which the fee is imposed
4. Determines a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributed to the development for which the fee is imposed

Before levying developer fees or prior to increasing an existing fee, the Board shall ~~schedule~~ **hold** a public hearing. The Superintendent or designee shall mail notice of the time and place of the meeting **at which a public hearing shall occur**, including a general explanation of the matter to be considered and a statement that the required data are available, at least 14 days prior to the meeting to any interested party who has requested such information. Any written request for mailed notices shall be valid for one year from the date on which it is filed

DEVELOPER FEES (continued)

unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The district may charge a fee reasonably related to the cost of providing these materials. (Government Code 66016)

Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition, and school construction shall be made available to the public at least 10 days before the hearing. (Government Code 66016)

At the hearing, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016)

The resolution shall set forth:

1. The purpose of the fee, **the use to which the fee is to be put**, and the public improvement(s) that the fee will be used to finance (Government Code 66001, 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. **If the district requires payment of the fee at a time earlier than the date of final inspection or the issuance of a certificate of occupancy, The— the district's determination of either of the following conditions which allow collection of the fees at the time when building permits are issued:** (Government Code 66007)
 - a. That the fees are to reimburse the district for previous expenditures
 - b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated, and the district has adopted a proposed construction schedule or plan

In the case of any commercial or industrial development, the Board shall make findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse. The Board shall also conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. (Education Code 17621)

DEVELOPER FEES (continued)**Level 2 Funding Fees: Residential Construction**

Note: Government Code 65995.5 allows the Board to impose a fee on residential construction that is higher than the Level 1 fee limit set forth in Government Code 65995 if the district ~~makes is considered eligible pursuant to Education Code 17071.10-17078.10 and a timely application to SAB for new construction funding under the State Facilities Program for which is made to the State Allocation Board it is determined to be eligible by SAB pursuant to Education Code 17071.10-17071.76.~~ In addition, Government Code 65995.5 requires the district to adopt a ~~"Facility Needs Analysis"~~ **facility needs analysis** and to satisfy the cost-saving/revenue-enhancing measures described in that section. The **facility needs analysis** ~~Needs Analysis~~ required by Government Code 65995.6 serves a similar purpose as the ~~Fee Justification Study fee justification study~~ detailed above, but specifies different legal requirements, as well as a different approval and adoption process. Government Code 65995.5 clarifies that developer fees may be expended on the costs of performing the needs analysis as well as on the administrative costs associated with collecting the fees.

In order to impose **Level 2** residential construction fees within the limits of Government Code 65995.5, the Board shall, **in addition to fulfilling the requirements above for Level 1 fees, undertake the following:** (Government Code 65995.5)

1. Make a timely application to the State Allocation Board (**SAB**) for new construction funding ~~for which it is eligible and be determined to be eligible by SAB~~
2. Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6
3. Satisfy at least two of the requirements set forth in Government Code 65995.5(b)(3)(A-D) ~~(Government Code 65995.5)~~

Note: Government Code 65352.2, ~~as added by AB 1367 (Ch. 396, Statutes of 2001),~~ requires the district to provide the notification specified below to the appropriate city or county planning agency. If the parties decide to meet, Government Code 65352.2 specifies issues that may be considered at the meeting.

At least 45 days prior to completion of the school facility needs analysis, the Board shall notify and provide copies of the analysis to the planning commission or agency of the city or county with land use jurisdiction within the district. Upon request of either party, the Board and city or county shall meet within 15 days following notification. (Government Code 65352.2)

(cf. 7131 - Relations with Local Agencies)

The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)

DEVELOPER FEES (continued)

This analysis ~~may~~ **shall** not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written comments it receives regarding the analysis. (Government Code 65995.6)

~~No~~ **Not** less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the district. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the district's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)

In addition, the Superintendent or designee shall mail a copy of the needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The district may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)

During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)

Note: Government Code 65995.6 provides that if the school facility needs analysis is revised during the period of public review or at the public hearing, the approval process must recommence (e.g., another 30-day review period, published notice, etc.).

The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. The existing school building capacity shall be recalculated as part of any revision to the needs analysis. (Government Code 65995.6)

Note: Pursuant to Government Code 65995.6, the fees take effect immediately upon adoption and are effective for only one year. After one year, the district must repeat the adoption process.

The fees authorized by Government Code 65995.6 and ~~Government Code~~ 65995.7 shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)

Level 3 ~~Funding~~ Fees: Residential Construction

Note: Government Code 65995.7 ~~has authorized~~ a district that is eligible to receive the Level 2 funding the authority to levy a still higher fee on residential construction (Level 3 funding) upon a determination by SAB that state funds are no longer available.

DEVELOPER FEES (continued)

When Level 3 fees are authorized by law and the district qualifies for Level 2 ~~funding fees~~ pursuant to Government Code 65995.5, the Board may assess a fee on residential construction pursuant to ~~the requirements of Government Code 65995.7.~~

~~Pursuant to Government Code 65995.7, the~~The notice and hearing requirements, resolution requirement, and term of effectiveness for Level 3 ~~funding fees~~ shall be the same as the requirements for Level 2 ~~funding fees~~ as specified above. **(Government Code 65995.7)**

Appeals Process for Protests by Developers

Note: In addition to authorizing developer protests in accordance with Government Code 66020 and 66021, Education Code 17621 requires the Board to provide an appeals process for commercial/industrial fees when the district has analyzed the impact of these projects on a categorical rather than individual basis.

The Superintendent or designee shall establish an appeals process for the handling of protests by developers. ~~(Education Code 17621)~~

Use of Fees

Note: Pursuant to Government Code 66006, the district may establish a reasonable annual charge, based on estimated cost, for sending the following notice.

The Board shall review ~~the above information~~ **provided by the Superintendent or designee pursuant to Government Code 66006 regarding each account or fund into which developer fees have been deposited**, at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. **(Government Code 66006)**

Note: Pursuant to Government Code 66001, if the following findings are not made every five years as required, the district may be required to refund the moneys in the account or fund pursuant to Government Code 66006(e).

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: **(Government Code 66001)**

1. Identify the purpose to which the fee is to be put
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged

DEVELOPER FEES (continued)

3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified
4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund

Legal Reference:

EDUCATION CODE

17070.10-~~17077.10~~ 17079.30 Leroy F. Greene School Facilities Act of 1998

17582 District deferred maintenance fund

17620-17626 Levies against development projects by school districts

101122 Schedule for allocation of proceeds from sale of bonds

GOVERNMENT CODE

6061 One time notice

6066 Two weeks' notice

65352.2 Level 2 funding notification requirement

65864-65869.5 Development agreements

65995-65998 Payment of fees against a development project

66000-66008 Fees for development projects

66016-~~66018.5~~ 66019 Development project fees Procedures for adopting various fees

66020-66025 Protests, legal actions, and audits

CODE OF REGULATIONS, TITLE 2

1859-1859.~~406-408~~ School facility program

COURT DECISIONS

Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School District (2019) 34 Cal. App. 5th 775

Summerhill Winchester LLC v. Campbell Union School District (2018) 30 Cal. App. 5th 545

Cresta Bella, LP v. Poway Unified School District (2013) 218 Cal.App.4th 438

Warmington Old Town Associates (2002) 101 Cal.App.4th 840

Dolan v. City of Tigard (1994) 114 S.Ct. 2309

Garrick Development Company v. Hayward Unified School District (1992) 3 Cal.App.4th 320

Management Resources:

WEB SITES

Department of General Services, Office of Public School Construction: <http://www.opsc.dgs.ca.gov>

<https://www.dgs.ca.gov/OPSC>

CSBA Sample

Administrative Regulation

Facilities

AR 7211(a)

DEVELOPER FEES

Note: Government Code 65995 provides authority for three different levels of developer fees to be levied by school districts. Pursuant to Education Code 17620 and Government Code 65995, Level 1 fees for residential, commercial and industrial construction may be assessed as long as the district's Developer Fee Justification Study, as required by Government Code 66001, justifies the amount. Pursuant to Education Code 17620, some types of construction may be exempted. Districts should consult with legal counsel as appropriate.

Level 1 Funding Fees: Residential, Commercial and Industrial Construction

Note: In order to levy or increase developer fees, Government Code 66001 requires that a district develop a Fee Justification Study which justifies the amount of the fee. The State Allocation Board sets the developer fee rates; these rates will be increased every two years. It is important to note that, in order to increase their rates, Government Code 66001 and 66016 requires districts to update their Fee Justification Study and to satisfy the notice and hearing requirements, as specified below. Education Code 17622 requires separate, special findings when levying fees on spaces enclosed for agricultural purposes.

Before taking action to establish, increase or impose developer fees, the Governing Board shall conduct a fee justification study which: (Government Code 66001)

1. Identifies the purpose of the fee and the use to which the fee will be put
2. Determines a reasonable relationship between the fee's use and the type of development project for which the fee is imposed
3. Determines a reasonable relationship between the need for the public facility and the type of development project for which the fee is imposed
4. Determines a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributed to the development for which the fee is imposed

Level 1 Funding Fees: Notice and Hearing Requirements

Before levying developer fees or prior to increasing an existing fee, the Board shall schedule a public hearing. The Superintendent or designee shall mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that the required data are available, at least 14 days prior to the meeting to any interested party who has requested such information. Any written request for mailed notices shall be

DEVELOPER FEES (continued)

valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The district may charge a fee reasonably related to the cost of providing these materials. (Government Code 66016)

Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition and school construction shall be made available to the public at least 10 days before the hearing. (Government Code 66016)

At the hearing, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016) The resolution shall set forth:

1. The purpose of the fee and the public improvement(s) that the fee will be used to finance (Government Code 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. The district's determination of either of the following conditions: (Government Code 66007)

Note: In order to collect fees earlier than the date of final inspection or the issuance of a certificate of occupancy, the district must determine either item #a or #b below.

- a. That the fees are to reimburse the district for previous expenditures
- b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated and the district has adopted a proposed construction schedule or plan

Level 2 Funding Fees: Residential Construction

Note: Government Code 65995.5 allows the Board to impose a fee on residential construction that is higher than the Level 1 fee limit set forth in Government Code 65995 if the district is considered eligible pursuant to Education Code 17071.10-17078.10 and a timely application is made to the State Allocation Board. In addition, Government Code 65995.5 requires the district to adopt a "Facility Needs Analysis" and to satisfy the cost saving/revenue enhancing measures described in that section. Government Code 65995.5 clarifies that developer fees may be expended on the costs of performing the needs analysis as well as on the administrative costs associated with collecting the fees.

In order to impose residential construction fees within the limits of Government Code 65995.5, the Board shall: (Government Code 65995.5)

DEVELOPER FEES (continued)

1. Make a timely application to the State Allocation Board for new construction funding for which it is eligible

Note: The Needs Analysis required by Government Code 65995.6 serves a similar purpose as the Fee Justification Study detailed above, but specifies different legal requirements, as well as a different approval and adoption process.

2. Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6
3. Satisfy at least two of the requirements set forth in Government Code 65995.5(b)(3)(A-D) (Government Code 65995.5)

Level 2 Funding Fees: Notice and Hearing Requirements

Note: Government Code 65352.2, as added by AB 1367 (Ch. 396, Statutes of 2001), requires the district to provide the notification specified below to the appropriate city or county planning agency. If the parties decide to meet, Government Code 65352.2 specifies issues that may be considered at the meeting.

At least 45 days prior to completion of the school facility needs analysis, the Board shall notify and provide copies of the analysis to the planning commission or agency of the city or county with land use jurisdiction within the district. Upon request of either party, the Board and city or county shall meet within 15 days following notification. (Government Code 65352.2)

(cf. 7131 *Relations with Local Agencies*)

The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)

Note: Government Code 65995.6 provides that if the school facility needs analysis is revised during the period of public review or at the public hearing, the approval process must recommence (e.g., another 30-day review period, published notice, etc.).

This analysis may not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written comments it receives regarding the analysis. (Government Code 65995.6)

During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)

DEVELOPER FEES (continued)

No less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the district. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the district's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)

In addition, the Superintendent or designee shall mail a copy of the needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The district may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)

The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. The existing school building capacity shall be recalculated as part of any revision to the needs analysis. (Government Code 65995.6)

Note: Pursuant to Government Code 65995.6, the fees take effect immediately upon adoption and are effective for only one year. After one year, the district must repeat the adoption process.

The fees authorized by Government Code 65995.6 and Government Code 65995.7 shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)

Level 3 Funding Fees: Residential Construction

Note: Government Code 65995.7 has authorized a district that is eligible to receive the Level 2 funding the authority to levy a still higher fee on residential construction (Level 3 Funding) upon a determination by the State Allocation Board that state funds are no longer available. However, with the passage of the 2002 School Facilities Bond (Proposition 47) and its implementing legislation, AB 16 (Ch. 33, Statutes of 2002), districts are prohibited from levying Level 3 fees until the 2004 primary election.

When Level 3 fees are authorized by law and the district qualifies for Level 2 funding pursuant to Government Code 65995.5, the Board may assess a fee on residential construction pursuant to the requirements of Government Code 65995.7.

Level 3 Funding Fees: Notice and Hearing Requirements

Pursuant to Government Code 65995.7, the notice and hearing requirements, resolution requirement, and term of effectiveness for Level 3 funding shall be the same as the requirements for Level 2 funding as specified above.

DEVELOPER FEES (continued)**All Developer Funding Fees: Additional Requirements**

The district shall send a copy of any **Governing Board** resolution adopting or increasing **Level 1, 2, or 3** developer fees to the city and county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area subject to the fee. (Education Code 17621)

In cooperation with local governmental agencies issuing building permits, the Superintendent or designee shall establish a means by which all of the following shall be accomplished:

1. The project applicant shall receive a written statement of the amount of the fees and notification that the 90-day approval period during which the applicant may protest has begun. (Government Code 66020)

Note: Item #2 below is optional and is intended to ensure that the district will have evidence that the required notification was delivered.

2. The Superintendent or designee shall receive and retain acknowledgment that the above notification was received.
3. Before a permit is issued and upon the payment of the applicable fee or requirement, the Board shall immediately certify that the fee has been paid or that the district has determined that the fee does not apply to the development project. (Education Code 17620)

Developer fees shall be deposited, invested, accounted for, and expended pursuant to Government Code 66006. Developer fees shall be deposited in a separate capital facilities account, except for temporary investments allowed by law, and shall be used only for the purpose for which they were collected. Interest income earned by the capital facilities account shall also be deposited in that account and used only for the purpose for which the fee was originally collected. (Government Code 66006)

For each separate account so established, the Superintendent or designee shall, within 180 days after the last day of each fiscal year, make available to the public **and the Board** the following information for the fiscal year: (Government Code 66006)

1. A brief description of the type of fee in the account or fund
2. The amount of the fee
3. The beginning and ending balance of the account or fund
4. The amount of the fees collected and the interest earned

DEVELOPER FEES (continued)

5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees
6. An identification of an approximate date by which the construction of the public improvement will commence if the district determines that sufficient funds have been collected to complete financing on an incomplete public improvement
7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan
8. The amount of refunds made pursuant to Government Code 66001(e) and any allocations made pursuant to Government Code 66001(f)

The Board shall review the above information at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

Note: Pursuant to Government Code 66006, the district may establish a reasonable annual charge, based on estimated cost, for sending the above notice.

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)

Note: Pursuant to Government Code 66001, if the findings are not made every five years as required, the district may be required to refund the moneys in the account or fund pursuant to Government Code 66006(e).

1. Identify the purpose to which the fee is to be put
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged
3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified

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DEVELOPER FEES (continued)

4. ~~Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund~~

When sufficient funds have been collected to complete the financing of public improvements but such improvements remain incomplete, the district shall, within 180 days of the date that a determination of sufficient funding was made, either identify an approximate date by which construction will begin or refund the unexpended revenues in accordance with Government Code 66001. (Government Code 66001)

Appeals Process for Protests by Developers

~~Note: Pursuant to Education Code 17621, a developer may protest the imposition of any developer fees listed above in accordance with the requirements in Government Code 66020.~~

The Superintendent or designee shall establish an appeals process for the handling of protests by developers. (Education Code 17621)

Developers of residential, commercial, and industrial projects who claim that the developer fee has been inappropriately levied shall use the following procedures: (Government Code 66020)

1. The developer shall tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.
2. The developer shall serve written notice to the Board. ~~This notice~~ **which** shall include:
 - a. A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest
 - b. A statement informing the Board of the factual elements of the dispute and the legal theory forming the basis for the protest
3. The protest shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees.

At the time of the imposition of the fee, the Superintendent or designee shall provide each project applicant written notice that the 90-day period in which the applicant may initiate a protest has begun. The developer may file an action to attack, review, set aside, void, or

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DEVELOPER FEES (continued)

annul the imposition of the fees imposed on the development project within 180 days of delivery of the notice. (Government Code 66020)

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CSBA Sample

Board Bylaw

Board Bylaws

BB 9320(a)

MEETINGS AND NOTICES

Meetings of the Governing Board are conducted for the purpose of accomplishing district business. In accordance with state open meeting laws (Brown Act), the Board shall hold its meetings in public and shall conduct closed sessions during such meetings only as authorized by law. To encourage community involvement in the schools, Board meetings shall provide opportunities for questions and comments by members of the public. All meetings shall be conducted in accordance with law and the Board's bylaws, policies, and administrative regulations.

(cf. 9321 - Closed Session)

(cf. 9322 - Agenda/Meeting Materials)

(cf. 9323 - Meeting Conduct)

A Board meeting exists whenever a majority of Board members gather at the same time and location, including teleconference location **as permitted by Government Code 54953**, to hear, discuss, deliberate, or take action upon any item within the subject matter jurisdiction of the Board or district. (Government Code 54952.2)

Note: The Brown Act prohibits serial meetings, defined under Government Code 54952.2 as a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of district business.

This prohibition against serial meetings also applies to communications via technology. Email exchanges, chat room threads, or comments posted on a blog or social media account that result in a majority of the **Governing** Board "discussing **among themselves**" an item within the subject matter jurisdiction of the Board could result in a Brown Act violation. Pursuant to Government Code 54952.2, as amended by AB 992 (Ch. 89, Statutes of 2020), Board members may engage in separate conversations or communications with members of the public on an Internet-based social media platform that is open and accessible to the public as long as a majority of the Board does not use the platform to discuss among themselves business within the subject matter jurisdiction of the Board and members do not comment on or use digital icons (e.g., "likes" or emojis) to express reactions to communications made by other Board members. Consequently, a Board member is prohibited from responding directly to any communication from other members of the Board on a social media platform regarding matters that are within the subject matter jurisdiction of the Board. See BB 9012 - Board Member Electronic Communications.

In 84 Ops.Cal.Atty.Gen. 30 (2001), the Attorney General opined that Government Code 54952.2 prohibits a majority of the Board from sending emails to each other to develop a collective concurrence as to action to be taken by the Board even if the emails are (1) sent to the secretary and chairperson, (2) posted on the district's web site, and (3) distributed **(in a printed version)** at the next meeting. Although the Attorney General recognized that those three conditions would allow the deliberations to be conducted, to some extent, "in public," the emails were prohibited by the Brown Act because all debate would be completed before the meeting and members of the public who did not have Internet access would be excluded from the debate.

MEETINGS AND NOTICES (continued)

A majority of the Board shall not, outside of an authorized meeting, use a series of communications of any kind, directly or through intermediaries, including social media and other electronic communications, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the Board. (Government Code 54952.2)

Note: Government Code 54952.2 specifies that briefings between staff and Board members are permissible in order to answer questions or to provide information, as long as the briefing is not used to communicate the comments or position of any other Board member. ~~Thus, Superintendent briefings involving less than a majority of the Board are allowed, but participants must ensure that the comments or positions of one member are not shared with other members.~~

However, an employee or district official may engage in separate conversations **or communications** with Board members in order to answer questions or provide information regarding an item within the subject matter jurisdiction of the Board, as long as that employee or district official does not communicate the comments or position of any Board members to other Board members. (Government Code 54952.2)

(cf. 9012 - Board Member Electronic Communications)

Note: Government Code 54953.2 requires that all Board meetings meet the protections of the Americans with Disabilities Act (**ADA**) (42 USC 12132) and implementing regulations (28 CFR 35.160, 36.303). Such protections require the district to ensure that the meeting is accessible to persons with disabilities and, upon request, to provide disability-related accommodations, such as auxiliary aids and services. Auxiliary aids and services may include accommodations at the actual meeting, such as a sign-language interpreter, or accommodations to the supporting documentation, such as Braille translation of the agenda packet. Government Code 54954.2 requires that the agenda specify how, when, and to whom a request for accommodation should be made; see BB 9322 - Agenda/Meeting Materials.

In order to help ensure the participation of individuals with disabilities at Board meetings, the Superintendent or designee shall provide appropriate disability-related accommodations or modifications upon request in accordance with the Americans with Disabilities Act. (Government Code 54953.2, 54954.1, 54954.2)

Regular Meetings

Note: Education Code 35140 and Government Code 54954 **mandate** the Board to fix the time and place for its regular meetings by rule and regulation.

The Board shall hold 1 time regular meeting(s) each month. Regular meetings shall be held at 4:30 p.m. on the 2nd Wednesday (day) at the each school site in alphabetical order.

Note: Pursuant to Government Code 54954.2, the agenda for a regular meeting must be posted at least 72 hours prior to the meeting, at a location that is freely accessible to the public. Government Code 54954.2 also requires that the agenda be posted on the district's **Internet** web site, if it has one. Any district that does not have a web site should delete the reference to it in the following paragraph.

MEETINGS AND NOTICES (continued)

The Attorney General has determined in 78 Ops.Cal.Atty.Gen. 327 (1995) that weekend hours may be counted as part of the 72-hour period for posting of the agenda prior to a regular meeting. In the same opinion, the Attorney General found that the term "freely accessible" requires that the agenda be posted in a location where it can be read by the public at any time during the 72 hours immediately preceding the meeting. For example, if a building where the agenda is posted is closed during the evening hours, the agenda must also be posted in a location accessible during evening hours, such as a lighted display case outside of the building. The Attorney General also opined in 88 Ops.Cal.Atty.Gen. 218 (2005) that the agenda may be posted on a touch screen electronic kiosk, in lieu of a paper copy on a bulletin board, as long as the kiosk is accessible without charge to the public 24 hours a day, seven days a week.

At least 72 hours prior to a regular meeting, the agenda shall be posted at one or more locations freely accessible to members of the public and on the district's **Internet** web site. (Government Code 54954.2)

(cf. 1113 - District and School Web Sites)

Note: Pursuant to Government Code 54957.5, the agenda must list any address where the public can inspect agenda materials that are distributed to Board members less than 72 hours before a regular meeting; see BB 9322 - Agenda/Meeting Materials. In addition, pursuant to the California Public Records Act (Government Code 6252-6270), agenda materials related to an open session of a Board's regular meeting are "public records" and are subject to the inspection of any member of the public. For a list of documents subject to disclosure by the district, see BP/AR 1340 - Access to District Records.

Whenever agenda materials relating to an open session of a regular meeting are distributed to the Board less than 72 hours before the meeting, the Superintendent or designee shall make the materials available for public inspection at a public office or location designated for that purpose **at the time the materials are distributed to all or a majority of the Board.** (Government Code 54957.5)

(cf. 1340 - Access to District Records)

Special Meetings

Note: Education Code 35144 and Government Code 54956 allow the Board to hold special meetings to address any matter that requires timely action. For example, the Board may hold a special meeting to discuss the need for an emergency state apportionment when the district is in financial distress; see **BP/AR** 3460 - Financial Reports and Accountability. However, pursuant to Government Code 54956, certain specified matters, as described below, may not be addressed in a special meeting.

Special meetings of the Board may be called at any time by the presiding officer or a majority of the Board members. However, a special meeting shall not be called regarding the salary, salary schedule, or other compensation of the Superintendent, assistant superintendent, or other management employee as described in Government Code 3511.1. (Government Code 54956)

(cf. 2121 - Superintendent's Contract)

MEETINGS AND NOTICES (continued)

Note: Pursuant to Government Code 54956, written notice of a special meeting may be delivered personally or by other means, including email or fax. Government Code 54956 requires any district that has its own Internet web site to also post the notice on its web site. Any district that does not have its own web site should delete reference to it in the following paragraph.

Written notice of special meetings shall be delivered personally or by any other means to all Board members and the local media who have requested such notice in writing. The notice also shall be posted on the district's Internet web site. The notice shall be received at least 24 hours before the time of the meeting. The notice shall also be posted at least 24 hours before the meeting in a location freely accessible to the public. The notice shall specify the time and location of the meeting and the business to be transacted or discussed. No other business shall be considered at this meeting. (Education Code 35144; Government Code 54956)

Any Board member may waive the 24-hour written notice requirement prior to the time of the meeting by filing a written waiver of notice with the clerk or secretary of the Board or by being present at the meeting at the time it convenes. (**Education Code 35144**; Government Code 54956)

Every notice of a special meeting shall provide an opportunity for members of the public to directly address the Board concerning any item that has been described in the meeting notice, before or during the item's consideration. (Government Code 54954.3)

Emergency Meetings

Note: Government Code 54956.5 authorizes a closed session during emergency meetings, as long as two-thirds of the members present at the meeting agree on the need for the closed session or, if less than two-thirds of the members are present, by unanimous vote of the members present. See BB 9321 - Closed Session and E(1) 9323.2 - Actions by the Board.

In the case of an *emergency situation* for which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board may hold an emergency meeting without complying with the 24-hour notice and/or 24-hour posting requirement for special meetings pursuant to Government Code 54956. The Board shall comply with all other requirements for special meetings during an emergency meeting. (Government Code 54956.5)

An *emergency situation* means either of the following: (Government Code 54956.5)

1. An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health and/or safety as determined by a majority of the members of the Board

(cf. 4141.6/4241.6 - *Concerted Action/Work Stoppage*)

MEETINGS AND NOTICES (continued)

2. A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist activity, or threatened terrorist activity that poses peril so immediate and significant that requiring the Board to provide one-hour notice before holding an emergency meeting may endanger the public health and/or safety as determined by a majority of the members of the Board

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

Except in the case of a dire emergency, the Board president or designee shall give notice of the emergency meeting by telephone at least one hour before the meeting to the local media that have requested notice of special meetings. All telephone numbers provided by the media in the most recent request for notification must be exhausted. If telephone services are not functioning, the notice requirement of one hour is waived and, as soon after the meeting as possible, the Board shall notify those media representatives of the meeting and shall describe the purpose of the meeting and any action taken by the Board. In the case of a dire emergency, the Board president or designee shall give such notice at or near the time notification is given to the other members of the Board about the meeting. (Government Code 54956.5)

The minutes of the meeting, a list of persons the Board president or designee notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for at least 10 days in a public place as soon after the meeting as possible. (Government Code 54956.5)

Adjourned/Continued Meetings

The Board may adjourn/continue any regular or special meeting to a later time and location that shall be specified in the order of adjournment. Less than a quorum of the Board may adjourn such a meeting. If no Board members are present, the secretary or the clerk may declare the meeting adjourned to a later time and place and shall give notice in the same manner required for special meetings. (Government Code 54955)

Within 24 hours after the time of adjournment, a copy of the order or notice of adjournment/continuance shall be conspicuously posted on or near the door of the place where the meeting was held. (Government Code 54955)

Study Sessions, Retreats, Public Forums, and Discussion Meetings

Note: The following section is **optional** and may be revised to reflect district practice. Pursuant to Government Code 54954.2, the Board must still comply with the public notice requirements when holding a study session, retreat, public forum or other such meeting.

MEETINGS AND NOTICES (continued)

The Board may occasionally convene a study session or public forum to study an issue in more detail or to receive information from staff or feedback from members of the public.

The Board may also convene a retreat or discussion meeting to discuss Board roles and relationships.

(cf. 2000 - Concepts and Roles)

(cf. 2111 - Superintendent Governance Standards)

(cf. 9000 - Role of the Board)

(cf. 9005 - Governance Standards)

(cf. 9400 - Board Self-Evaluation)

Public notice shall be given in accordance with law when a quorum of the Board is attending a study session, retreat, public forum, or discussion meeting. All such meetings shall comply with the Brown Act and shall be held in open session and within district boundaries. Action items shall not be included on the agenda for these meetings.

Other Gatherings

Attendance by a majority of Board members at any of the following events is not subject to the Brown Act provided that a majority of the Board members do not discuss specific district business among themselves other than as part of the scheduled program: (Government Code 54952.2)

1. A conference or similar public gathering open to the public that involves a discussion of issues of general interest to the public or to school board members
2. An open, publicized meeting organized by a person or organization other than the district to address a topic of local community concern
3. An open and noticed meeting of another body of the district
4. An open and noticed meeting of a legislative body of another local agency
5. A purely social or ceremonial occasion
6. An open and noticed meeting of a standing committee of the Board, provided that the Board members who are not members of the standing committee attend only as observers

(cf. 9130 - Board Committees)

MEETINGS AND NOTICES (continued)

Individual contacts or conversations between a Board member and any other person are not subject to the Brown Act. (Government Code 54952.2)

Location of Meetings

Meetings shall not be held in a facility that prohibits the admittance of any person on the basis of ancestry or any characteristic listed in Government Code 11135. In addition, meetings shall not be held in a facility which is inaccessible to individuals with disabilities or where members of the public must make a payment or purchase in order to be admitted. (Government Code 54961)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

Meetings shall be held within district boundaries, except to do any of the following: (Government Code 54954)

1. Comply with state or federal law or court order or attend a judicial or administrative proceeding to which the district is a party
2. Inspect real or personal property which cannot conveniently be brought into the district, provided that the topic of the meeting is limited to items directly related to the property
3. Participate in meetings or discussions of multiagency significance, provided these meetings are held within one of the other agencies' boundaries, with all participating agencies giving the notice required by law
4. Meet in the closest meeting facility if the district has no meeting facility within its boundaries or if its principal office is located outside the district
5. Meet with elected or appointed state or federal officials when a local meeting would be impractical, solely to discuss legislative or regulatory issues affecting the district over which the state or federal officials have jurisdiction
6. Meet in or near a facility owned by the district but located outside the district, provided the meeting agenda is limited to items directly related to that facility
7. Visit the office of the district's legal counsel for a closed session on pending litigation, when doing so would reduce legal fees or costs
8. Attend conferences on nonadversarial collective bargaining techniques

MEETINGS AND NOTICES (continued)

9. Interview residents of another district regarding the Board's potential employment of an applicant for Superintendent of the district
10. Interview a potential employee from another district

Meetings exempted from the boundary requirements, as specified in items #1-10 above, shall still be subject to the notice and open meeting requirements for regular and special meetings when a quorum of the Board attends the meeting.

If a fire, flood, earthquake, or other emergency renders the regular meeting place unsafe, meetings shall be held for the duration of the emergency at a location designated by the Board president or designee, who shall so inform all news media who have requested notice of special meetings by the most rapid available means of communication. (Government Code 54954)

Teleconferencing

A teleconference is a meeting of the Board in which Board members are in different locations, connected by electronic means through audio and/or video. (Government Code 54953)

The Board may use teleconferences for all purposes in connection with any meeting within the Board's subject matter jurisdiction. All votes taken during a teleconference meeting shall be by roll call. (Government Code 54953)

During the teleconference, at least a quorum of the members of the Board shall participate from locations within district boundaries. (Government Code 54953)

Agendas shall be posted at all teleconference locations and shall list all teleconference locations whenever they are posted elsewhere. Additional teleconference locations may be provided to the public. (Government Code 54953)

Note: In 84 Ops.Cal.Atty.Gen. 181 (2001), the Attorney General opined that a city is not required under the **ADA Americans with Disabilities Act** to provide, as an accommodation for city council member with disabilities who was unable to attend a regularly scheduled meeting, a teleconference connection to the member's house where the public would not be permitted to be present. According to the Attorney General, Government Code 54953 requires that members of the public be permitted to be present at any teleconference location.

All teleconference locations shall be accessible to the public. All teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Board, including the right of the public to address the Board directly at each teleconference location. (Government Code 54953)

MEETINGS AND NOTICES (continued)**Teleconferencing During a Proclaimed State of Emergency**

Note: Pursuant to Government Code 54953, as amended by AB 361 (Ch. 165, Statutes of 2021), boards are authorized, until January 1, 2024, to conduct board meetings by teleconference as specified below when holding a board meeting during a proclaimed state of emergency pursuant to Government Code 8625-8629 when any of the following circumstance exist: (1) state or local officials have imposed or recommended measures to promote social distancing; (2) to determine whether, as a result of an emergency, meeting in person would present imminent risks to the health or safety of attendees; or (3) when it has been determined, as a result of an emergency, that meeting in person would impose such risks.

While a resolution is not required by law to make findings required by Government Code 54953, as amended by AB 361, CSBA offers sample resolutions available on its web site for (1) recognizing a state of emergency and authorizing teleconferenced meetings and (2) recognizing a state of emergency and re-authorizing teleconferenced meetings. CSBA recommends that if resolutions are not utilized, the motion and findings to authorize or reauthorize emergency teleconferenced meetings are included in the meeting minutes.

The Board may conduct Board meetings by teleconference without posting agendas at all teleconference locations, identifying teleconference locations in meeting notices and agendas, allowing public access to each teleconference location, providing an opportunity for members of the public to address the Board directly at each teleconference location, and ensuring that at least a quorum of the Board participate from locations within district boundaries, during a proclaimed state of emergency pursuant to Government Code 8625-8629 in any of the following circumstances: (Government Code 54953)

1. State or local officials have imposed or recommended measures to promote social distancing
2. For the purpose of determining, by majority vote, whether as the result of the emergency meeting in person would present imminent risks to the health or safety of attendees
3. When it has been determined, by majority vote as described in Item #2 above, that as a result of the emergency meeting in person would present imminent risks to the health or safety of attendees

To conduct a teleconference meeting for these purposes the following requirements shall be satisfied: (Government Code 54953)

1. The notice and agenda shall be given and posted as otherwise required by the Brown Act

MEETINGS AND NOTICES (continued)

2. The notice and agenda of the meeting shall specify the means by which members of the public may access the meeting and offer public comments, including via a call-in or internet-based service option

Members of the public may be required to register to log in to a meeting when making public comments through an internet web site or other online platform that is operated by a third-party and not under the control of the Board.

3. Members of the public shall be allowed to access the meeting, and the agenda shall provide an opportunity for members of the public to address the Board directly pursuant to Government Code 54954.3

4. Members of the public shall not be required to submit public comments in advance of a Board meeting and shall be provided an opportunity to address the Board and offer comments in real time

5. Public comment periods shall not be closed until the timed public comment period, if such is offered by the Board, has elapsed or, if not timed, until a reasonable amount of time per agenda item has been allowed

6. If during a Board meeting a disruption occurs which prevents the district from broadcasting the meeting to members of the public or for members of the public to offer public comments, the Board shall take no further action on any agenda item until public access via the call-in or internet-based service option to the meeting is restored

(cf. 9323.2 - Actions by the Board)

The district may, in its discretion, provide a physical location from which the public may attend or comment. (Government Code 54953)

The Board may continue to conduct meetings by teleconference, as specified above for teleconferencing during proclaimed states of emergency, by a majority vote finding within 30 days after teleconferencing for the first time, and every 30 days thereafter, that either: (Government Code 54953)

1. The state of emergency continues to directly impact the ability of the Board to meet safely in person
2. State or local officials continue to impose or recommend measures to promote social distancing

MEETINGS AND NOTICES (continued)

All Board policies, administrative regulations, and bylaws shall apply equally to meetings that are teleconferenced. The Superintendent or designee shall facilitate public participation in the meeting at each teleconference location.

Legal Reference:

EDUCATION CODE

- 35140 Time and place of meetings
- 35143 Annual organizational meeting, date, and notice
- 35144 Special meeting
- 35145 Public meetings
- 35145.5 Agenda; public participation; regulations
- 35146 Closed sessions in connection with a student
- 35147 Open meeting law exceptions and applications

GOVERNMENT CODE

- 3511.1 Local agency executives
- 6252-6270 California Public Records Act
- 8625-8629 California Emergency Services Act
- 11135 State programs and activities; prohibition of discrimination
- 54950-54963 The Ralph M. Brown Act, especially:
 - 54953 Meetings to be open and public; attendance; teleconference
 - 54954 Time and place of regular meetings
 - 54954.2 Agenda posting requirements, board actions
 - 54956 Special meetings; call; notice
 - 54956.5 Emergency meetings

UNITED STATES CODE, TITLE 42

- 12101-12213 Americans with Disabilities Act
- CODE OF FEDERAL REGULATIONS, TITLE 28
- 35.160 Effective communications for individuals with disabilities
- 36.303 Auxiliary aids and services for individuals with disabilities

COURT DECISIONS

- Garnier v. Poway Unified School District, (S.D. Cal. September 26, 2019) No. 17-cv-2215-W (JLB), 2019 WL 4736208 (S.D. Cal. September 26, 2019)
- Knight First Amendment Institute at Columbia University v. Trump, (2019) 928 F.3d 226 (2019)
- Wolfe v. City of Fremont, (2006) 144 Cal.App. 4th 533 54433

ATTORNEY GENERAL OPINIONS

- 88 Ops.Cal.Atty.Gen. 218 (2005)
- 84 Ops.Cal.Atty.Gen. 181 (2001)
- 84 Ops.Cal.Atty.Gen. 30 (2001)
- 79 Ops.Cal.Atty.Gen. 69 (1996)
- 78 Ops.Cal.Atty.Gen. 327 (1995)

Management Resources: (see next page)

MEETINGS AND NOTICES (continued)

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, rev. 2019

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

The ABCs of Open Government Laws

LEAGUE OF CALIFORNIA CITIES PUBLICATIONS

*Open and Public **V IV**: A Guide to the Ralph M. Brown Act, 2016 2nd Ed., 2010*

WEB SITES

CSBA: <http://www.csba.org>

CSBA, GAMUT Meetings:

<http://www.csba.org/ProductsAndServices/AllServices/GamutMeetingsPolicy>

California Attorney General's Office: <http://oag.ca.gov/home>

Institute for Local Government: <http://www.ca-ilg.org>

League of California Cities: <http://www.cacities.org>

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